Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 5 of 2001

1. Smt. Mootra Devi W/o late Shri RAchcha Ram R/o Mauza-Kaji evar, Village-Saidwapur, P.O.– Barha Moti Ganj, Chota Govind Parha, District-Gonda

……..Claimant/Appellant

2. Shri Dukhai S/o late Shri Goli
3. Smt. Manthura W/o Shri Dukhai
Both 2 and 3 are resident of Mauza-Kaji Devar, Village-Saidwapur, P.O. – Barha Moti Ganj, Chota Govind Parha, District-Gonda.

…….Appellants/Opposite Parties

Versus

1. Shri Mohan Singh Rawat S/o Tek Singh R/o Patti Mughal Sati, Police Station – Kurela Distt. Uttarkashi presently residing at A 192-C M.D.D.A. Colony, Chander Road, Dehradun.
2. Shri Manoj Rawat, S/o Shri Sakal Chand Rawat R/o Nogaon, Tahseel Barhkot, P.S. – Puroal Uttarkashi and also C/o Shri Mohan Singh Rawat A 192-C M.D.D.A. Colony, Chander Road, Dehradun
3. New India Assurance Co. Ltd, Nogaon Uttarkashi, Through Senior Divisional Manager, New India Assurance Company Ltd., Astley Hall, Dehradun.

……..Opp. Parties/Respondents

Mr. Rajendra Dobhal, learned counsel for the appellant.
Mr. V.K. Kohli, learned counsel for Respondent No.3

Date: September 29, 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the judgment and award dted 20.07.2000 passed by Motor Accident Claims Tribunal/ District Judge, Dehradun in Motor Accident Claim Case No.53 of 1998, whereby the O.P.No.3/Respondnet No.3 has been directed to pay Rs.1,33,000/- as compensation alongwith interest at the rate of 10% per annum from the date of application till

the date of final payment. The relief sought by the appellants is to modify the impugned judgment and award and to enhance the compensation.

Brief facts giving rise to this appeal are that Shri Rachcha Ram S/o Shri Dukhai on 18.11.1997 at about 12.30 P.M. alongwith other colleague Sri Raju was going to sell vegetables near M.D.D.A. Colony, General Mahadev Singh Road, Dehradun. A truck bearing No. UP 07-G3793 being driven rashly and negligently by its driver came and hit the deceased from behind causing grievous injuries on his body and the handcart also got damaged. The deceased was taken to Doon Hospital for treatment where he died. The deceased was about 29 years at the time of accident and it was alleged in the claim petition that the deceased was earning Rs.4,500/- per month. The claimants, who are dependents of the deceased, filed the claim petition against the Opposite Parties for a compensation of Rs.9,92,000/- on account of dependency loss due to the death of the deceased.

The opposite parties contested the claim petition before the Tribunal by filing their separate written statement. The Opposite Party No.2 stated in its written statement that the O.P. No.1 is the authorized driver with a valid driving licence and the truck was insured with the New India Insurance Company at the time of the accident. It has also been alleged that the truck was being driven slowly at moderate speed and hence the O.P. No.2 is not liable to pay any compensation.

The O.P. No.3, the New India Insurance Company has filed its written statement that the accident has not occurred due to

the rash and negligent driving of the truck and the deceased was not earning an amount of Rs.4,500/- per moth. It has also been alleged that the amount claimed is excessive. The Tribunal, on the pleadings of the parties, framed necessary issues and partly allowed the claim petition for a compensation of Rs. 1,33,000/- against the O.P. No.3-New India Assurance Company Ltd. Accordingly. Feeling aggrieved, the appellants/claimants have come up in this appeal for enhancement of compensation.

The learned counsel for the appellant has submitted that the learned Tribunal has not correctly applied the multiplier according to the age of deceased as per second Schedule provided under Section 163-A of the Motor Vehicles Act, 1988 and confines his prayer to correct the multiplier according to the Schedule 163-A of Motor Vehicles Act and has further submitted that the amount of 1/3rd has wrongly been deducted from the amount of dependency, which may be corrected. While deciding the Issues No.1 and 2, the learned Tribunal found that the deceased was earning Rs.200/- to Rs.300/- per day by way of selling vegetables, It was also been found that the deceased used to send an amount of Rs.1000/- per month for meeting the household expenses by way of the money order to his home in Gonda District. As such, the total annual dependency comes to Rs.12,000/- per annum. The Tribunal further deducted 1/3rd of amount towards personal expenses. We are of the view that the Tribunal has also erred while applying the multiplier of '16'. We have heard learned counsel for both the parties, gone though the record of the case and perused the impugned judgment. The age of the deceased was -29- years as held by the Tribunal on

the basis of the evidence. According to the Schedule provided in the aforesaid Act, the multiplier should have been applied '18'. After deducting expense from the income, the Tribunal held that the deceased used to send the amount of Rs.1,000/- per annum to his wife to meet out the domestic expense and thus calculated the annual loss of dependency of Rs. 12,000/- per annum. The Tribunal gave a wrong finding of 1/3rd deduction towards lump-sum payment of compensation. Therefore, we are of the view that the multiplier should have been applied of '18' for calculating the amount of compensation. So, after applying the multiplier of '18' the amount of compensation comes to Rs.2,16,000/-. The learned Tribunal rightly awarded Rs.5,000/- to the claimants on account of loss of consortium. Thus, the total amount of compensation now comes to Rs.2,21,000/- which the claimants are entitled to get from the opposite party No.3-New India Assurance Company Ltd.

The appeal is partly allowed. The Opposite party No.3-New India Assurance Company Ltd. shall pay Rs.2,21,000/- (Rupees two lac twenty one thousands only) instead of Rs.1,33,000/- alongwith interest at the rate fixed by the Tribunal in the impugned order. The impugned order is modified accordingly. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang